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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. TRACY L. MAXWELL, Defendant and Appellant.	B148871 (Los Angeles County Super. Ct. No. NA047062)

APPEAL from a judgment of the Superior Court of Los Angeles County, Arthur H. Jean, Jr., Judge. Affirmed.

Patricia J. Ulibarri, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Deputy Attorney General, William T. Harter, Supervising Deputy Attorney General, and Michael R. Johnsen, Deputy Attorney General, for Plaintiff and Respondent.

Tracy Maxwell appeals from the judgment entered following his plea of no contest to possession of a controlled substance. He contends that his motion to suppress evidence was improperly denied. We affirm.

BACKGROUND

At the suppression hearing, the prosecution presented evidence that at approximately 12:30 a.m. on November 18, 2000, Long Beach police officers approached defendant outside a motel on Pacific Coast Highway that was known for prostitution and narcotics activity. The officers asked defendant if they could speak with him, and defendant replied in the affirmative. The officers also asked defendant if he was on probation or parole. Defendant said that he was. The officers confirmed by radio or computer that defendant was a parolee. They next asked defendant whether he had a room at the motel and whether he possessed any narcotics. Defendant replied in the negative to both questions.

One of the officers then told defendant that he was going to call for the canine unit to send over a drug-sniffing dog. The officer explained that "since [defendant] was on parole, he could be subject to search and seizure. We could have searched his pocket. Nowadays they are smart. They hide it in their underwear. They hide it in the different places where we can't search on the street. I just wanted to see his reaction to the question." In response to the officer's statement about getting a dog, defendant produced a baggie of cocaine from the back of his pants. Defendant was arrested at that point. The encounter took five to ten minutes.

Defendant testified at the hearing that the officers approached him with their guns drawn and never asked for consent to speak with him. Defendant asked the officers if he could leave and was told that he could not. One of the officers reached into defendant's pants and pulled out the narcotics.

Defendant argued to the trial court that, irrespective of whether his testimony was believed, the officers "weren't making any kind of parole search," but were "basically just shaking down anyone who was on the street in a certain area." Defendant asserted

that he had been subjected to a prolonged detention without probable cause and the search was therefore illegal.

The court commented that it did not see anything wrong with officers asking defendant if he was on parole. "Once they know he is on parole, he's in a high narcotics area like that, in my view they have a right to search him with or without his permission, with or without any further probable cause. [¶] So on that basis alone it seems to me that if they did search him they had a right to do so."

The prosecutor agreed with the court's comment. After further argument, defendant's motion was denied.

DISCUSSION

In *People v. Reyes* (1998) 19 Cal.4th 743, our Supreme Court retreated from a previous pronouncement that a warrantless search of a parolee "must be justified by at least a reasonable suspicion 'that the parolee has violated the law or another condition of his parole, or is planning to do so.'" (*Id*. at p. 746.) Instead, it held that "reasonable suspicion is no longer a prerequisite to conducting a search of the subject's person or property. Such a search is reasonable within the meaning of the Fourth Amendment as long as it is not arbitrary, capricious or harassing." (*Id*. at p. 752.) With respect to this limitation, the court explained that "'a parole search could become constitutionally "unreasonable" if made too often, or at an unreasonable hour, or if unreasonably prolonged or for other reasons establishing arbitrary or oppressive conduct by the searching officer.' [Citations.]" (*Id*. at pp. 753–754.)

Defendant concedes that the trial court was not required to believe his testimony but argues that his motion should have been granted as a matter of law. (See *People v. Leyba* (1981) 29 Cal.3d 591, 596–597.) He claims that he was subject to a prolonged detention and that the officers' threat to call for a drug-sniffing dog was an arbitrary and capricious ruse. We disagree.

The entire encounter between defendant and the police took five to ten minutes, and the ruse enabled the officers to seize the narcotics in defendant's possession without the necessity of any physical intrusion. There was nothing unreasonable, arbitrary, or

capricious about the officers' conduct. The seizure of narcotics therefore was valid under *People v. Reyes, supra.*

Defendant contends in the alternative that *Reyes* is not controlling because it is contrary to an interpretation of federal constitutional law rendered by the Ninth Circuit in *United States v. Knights* (9th Cir. 2000) 219 F.3d 1138. On certiorari in *Knights*, the United States Supreme Court recently declined to reach this issue. (*United States v. Knights* (Dec. 10, 2001, No. 00-1260) ___ U.S. ___ [122 S.Ct. 587, 592, fn. 6].) Nevertheless, *Knights* involved the distinguishable situation of a pre-planned search of a probationer's home. (*Id*. at p. ___ [589].) Moreover, the Ninth Circuit recognized that its conclusions were inconsistent with those of the California Supreme Court (219 F.3d at p. 1143), and the United States Supreme Court noted that the California Supreme Court had "upheld searches pursuant to the California probation condition 'whether the purpose of the search is to monitor the probationer or to serve some other law enforcement purpose.' [Citation.]" (___ U.S. at p. ___ [122 S.Ct. at p. 590].) Accordingly, defendant's argument must be rejected.

DISPOSITION

The judgment is affirmed.

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MALLANO, J.

We concur:

ORTEGA, Acting P. J.

VOGEL (MIRIAM A.), J.